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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th September 2010

No. 8175-li/1(SS-1)-2009-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th June 2010 in Industrial Dispute Case No. 9 of 2009 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Sarpanch/Executive Officer, Bauriguda Gram Panchayat, At/P.O. Bauriguda, Kuchinda, Dist. Sambalpur and their Workman Shri Satya Kumar Sahu, was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 09 OF 2009

Dated the 17th December 2010

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Management of
Sarpanch/Executive Officer,
Bauriguda Gram Panchayat,
At/P.O. Bauriguda, Kuchinda,
Dist. Sambalpur. .. First Party—Management

And

Their Workman

Shri Satya Kumar Sahu,
 S/o Sundarmani Sahu,
 At/P.O. Bauriguda,
 P.S. Mahulpali,
 Dist. Sambalpur.

.. Second Party—Workman

Appearances :

Shri A. K. Biswal,
 Executive Officer.

.. For the First Party—Management

Self

.. For the Second Party—Workman

A W A R D

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) in Memo. No. 5982 (5), Dt. 7-7-2009 for adjudication of this schedule questions:

“Whether the termination of services Satya Kumar Sahu, Peon, Bauriguda Gram Panchayat by the Sarpanch, Bauriguda, Kuchinda with effect from 12-3-2004 is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The case of the second-party workman stated as follows—

The workman was employed by the first-party management since 12-11-1987. The Sarpanch/ Executive Officer is a State Government establishmemt of the first-party is an industry within the definition of Section 2(j) of the Industrial Disputes Act, 1947 (The Industrial Disputes Act, 1947). So the workman being engaged in the farm is entitled to get protection under the Industrial Disputes Act, 1947. As alleged the second-party was paid his wages by the first-party management on monthly basis. He was assigned duties in the establishment as and when directed and required by the first-party management. So the second-party is a workman under Section 2 (s) of the Industrial Disputes Act, 1947. The second-party workman started his work since 12-11-1987 and he was continued in his service as per Industrial Disputes Act, 1947.

The first-party management all of a sudden refused the service of the second-party workman with effect from 12-3-2004 without assigning any reason thereof. The action of the management amounts to retrenchment which is illegal and beyond the procedure laid down in Section 25 (F)/ 25(N) of the Industrial Disputes Act, 1947. The first-party management did not pay any retrenchment compensation to the second-party workman and never observed the principle of “First come last go” and “last come first go”. So the aforesaid retrenchment of the second-party workman is void *ab initio*. So the second-party workman lodged a complaint petition before the Local Labour Machinery, Sambalpur who after investigation put the matter for cociliation. However, the

management did not co-operate. So the conciliation ended without any decision taken by the management. The second-party workman made a prayer that the order of retrenchment with effect from 12-3-2004 be declared as illegal and void *ab initio*. He also made a prayer for reinstatement in his job with back wages from the date of illegal termination of his service i.e. on 12-3-2004 till the date of order of this Court and for other reliefs.

3. Written statement filed by the management. As per the written statement, the management never terminated the services of any person with effect from 12-3-2004. The second-party is not a workman of this Gram Panchayat, Bauriguda and there is no such post as per the claim in the Gram Panchayat, Bauriguda.

It is further alleged that the Sarpanch/Executive Officer is not a State Government establishment or not an Industry under the definition of Section 2 (j) of the Industrial Disputes Act. It is a local autonomous body. The second-party workman is not at all a workman in the management establishment. The first-party management has not taken any action for retrenchment of the second-party with effect from 12-3-2004. Moreover there is no retrenchment in the alleged office. So the question of compensation does not arise. There is no such post like the second-party workman in the Gram Panchayat and no workman has been engaged in the said office. So the management never violated any provision of the Industrial Disputes Act, 1947. Hence the first-party management prayed to dismiss the case with cost.

4. Rejoinder filed by the second-party workman denying all the contents of the first-party management given in the written statement. The objection filed on behalf of the first-party management basing on the rejoinder filed by the second-party workman. The management entirely denied the retrenchment of the second-party workman. So the first-party management made a prayer to dismiss the case of the workman with cost.

5. Out of the pleadings of the parties the following issues have been framed for adjudication.

ISSUES

- (i) "Whether the termination of service Satya Kumar Sahu, Peon, Bauriguda Gram Panchayat by the Sarpanch, Bauriguda, Kuchinda with effect from 12-3-2004 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?"

6. The second-party workman files some documents in support of his case whereas no document has been filed by the management.

7. In order to prove the case Satya Kumar Sahu, the second-party workman was examined as W.W. 1. On behalf of the management Ashwin Kumar Biswal, the Executive Officer, Kuchinda Block has been examined as M.W.1.

FINDINGS

8. *Issues No. (i) and (ii)*—In order to facilitate this case issues No. (i) and (ii) should be taken up together for consideration. The workman claims that he started his work since 12-11-1987 being engaged by the first-party management. The second-party workman was paid his wages by the first-party management on monthly basis. The second-party workman has performed his duties in the establishment as and when directed and required by the management. So he claims that there is master and servant relationship in between himself and the first-party management, since 12-11-1987 the workman discharged his duty continuously. As alleged the first-party management refused his service from the date i.e. since 12-3-2004 without assigning any reason. So the workman claims that such action taken by the management amounts to retrenchment which is illegal. Moreover he claims that the management has not paid any amount such as compensation to the second-party workman.

The workman has filed some documents which are marked as Ext.W.1 to Ext. W.7. Ext. W.1 is the carbon copy of appointment letter issued by Sarpanch, Bauriguda Gram Panchayat in favour of the second-party workman Satya Kumar Sahu which discloses that as per the decision of the Executive body the second-party workman Satya Kumar Sahu was engaged as Peon in Bauriguda Gram Panchayat on monthly salary of Rs. 150. Ext. W.2 is the letter Dt. 12-3-2004 of the management i.e. Panchayat Karyalaya, Bauriguda, intimating the second-party workman that the second-party workman has stopped his work in the office since 2003 without taking any leave from any competent person. As alleged from Ext.W.2 during that period the second-party workman has misappropriated cash of Rs. 4000 which has been collected from different persons such as Badrinarayan Patel at different stages. So the Sarpanch, Bauriguda Gram Panchayat decided to take steps against the second-party workman and called for show cause from the workman as per Ext.W.2. Ext.W.3 is the xerox copy of the show cause filed by the workman denying the allegations made against him. Ext.W.4 is the another letter Dt. 20-9-2006 filed by the workman before Bauriguda Sarpanch. Ext.W.5 is the copy of the letter Dt. 30-10-2008. Ext.W.6 is the carbon copy of representation filed by the second-party workman before D.L.O. Sambalpur. Ext.W.7 is the copy of the representation to the Labour Commissioner Dt. 25-5-2007.

9. As per the evidence of M.W.1 the second-party workman has not been engaged by the first-party management of Bauriguda Gram Panchayat, since 2000 M.W.1 was working as V.L.W. Since 2002 he was working as Executive Officer at Jamankira Block and since 2007 he was working as Executive Officer of Kuchinda Block. In the years 2007 and 2008 M.W.1 joined as Executive Officer at Bauriguda Panchayat. He has no knowledge whether the workman joined at Bauriguda Panchayat Office as a Peon in the year 1987. It is crystal clear from his evidence that as the workman was not doing any work since long in the concerned office he is not entitled to get his wages.

10. As per the resolution of Bauriguda Panchayat, the second-party workman was terminated from his service. As alleged this workman has never discharged his duty in the said Bauriguda Panchayat Office during the tenure of M.W.1. It is clear from the evidence of M.W.1 that the management for several times gave caution to the workman to be regular in his service but the second-party workman did not turn up nor listen to the management. So the management has engaged another Peon in place of the second-party workman.

11. From the evidence on record it is apparent that the second-party workman being engaged by Bauriguda Gram Panchayat (first-party management) was working as Peon in the said establishment. Subsequently, the workman stopped his work and did not turn up to the office for long period. He was absent since long without taking any leave or without any intimation to the management. He has neglected in his duty without giving any importance to his service inspite of getting letters from the management. So the management intimated this workman and directed him to join within a stipulated period but the workman did not turn up. At the last stage, the management engaged another Peon in his office in place of the workman as it is clear from the evidence of M.W.1. When the workman on his own accord or on his sweet will stopped his work and did not obey the order of the management he is not entitled to get any relief. Moreover, he is not entitled to get any back wages as basing on the principle "No work no pay". Accordingly, the issues are answered. Hence the following award.

AWARD

The reference is answered on contest but without any cost. Hence the termination of service Satya Kumar Sahu, Peon, Bauriguda Gram Panchayat by the Sarpanch, Bauriguda, Kuchinda with effect from 12-3-2004 is legal and justified. Accordingly, the workman is not entitled to get any relief nor any back wages in this case.

Dictated and corrected by me.

S. MAHAPATRA

17-6-2010

Presiding Officer

Labour Court

Sambalpur

S. MAHAPATRA

17-6-2010

Presiding Officer

Labour Court

Sambalpur

By order of the Governor

P. K. PANDA

Under-Secretary to Government